UNITED
NATIONS

CCPR

International covenant
on civil and
political rights

Distr.
GENERAL

CCPR/CO/70/PER
15 November 2000

ENGLISH
Original: SPANISH

HUMAN RIGHTS COMMITTEE
Seventieth session

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 40 OF THE COVENANT

Concluding observations by the Human Rights Committee

Peru

1. The Committee considered the fourth periodic report of Peru (CCPR/C/PER/98/4), at its 1879th, 1880th and 1881st meetings, held on 23 and 24 October 2000 and, at the 1892nd meeting, held on 1 November 2000, adopted the following concluding observations.

A. Introduction

2. The Committee welcomes with satisfaction he fourth periodic report submitted by the State party, as well as the comments on the concluding observations and recommendations of the Committee on the third periodic report (CCPR/C/83/Add.4). It also appreciates the delegation's willingness to establish a dialogue with it. However, it regrets the fact that the report does not contain relevant statistical data and does not deal adequately with the difficulties the State party encounters in implementing the Covenant.

B. Positive aspects

3. The Committee welcomed the announcement of the holding of early presidential elections in 2001 and hopes that they will take place in an atmosphere of transparency and freedom, in accordance with international standards.

4. The Committee welcomes with satisfaction the fact that "faceless" courts have been abolished as the Committee recommended (CCPR/C/79/Add.67); the fact that the offence of terrorism has been transferred from the jurisdiction of the military courts to that of the ordinary criminal courts; and the fact that the state of emergency affecting areas of the national territory has been rescinded.

5. The Committee regards it as a positive sign that, under Act No. 26,926 of 21 February 1998, torture has been characterized as an offence in the chapter of the Penal Code on crimes against humanity.

6. In the Committee's opinion, another favourable development is that machinery has been established for the protection of women, such as the Office of the Ombudsman Specializing in Women's Rights within the Ombudsman's Office and the Congressional Commission on Women and Human Development. The Committee also expresses its satisfaction with the adoption of civil and criminal legislation recognizing the rights of women.

C. Principal subjects of concern and recommendations

7. The Committee again regrets the fact that Peru has not taken account of the recommendations made following the consideration of the third periodic report (CCPR/C/79/Add.67, paras. 20-26 and CCPR/C/79/Add.72, paras. 19-25). Many of the subjects of concern referred to at that time continue to be matters of concern at present.

8. The Committee considers that, despite transitional provision 4 of the Constitution of Peru stating that the rules relating to the rights and freedoms which the Constitution recognizes are interpreted in accordance with the International Covenant on Civil and Political Rights and other relevant treaties ratified by Peru, the rank of the Covenant in the internal legal system is not clear and the rights recognized in it do not appear to be respected.

The Committee recommends that the necessary legal measures should be taken to guarantee the rights recognized in the Covenant, in accordance with article 2, paragraph 1, of the Covenant.

9. The Committee deplores the fact that its recommendations on the 1995 amnesty laws have not been followed and reiterates that these laws are an obstacle to the investigation and punishment of the persons responsible for offences committed in the past, contrary to article 2 of the Covenant. The Committee is deeply concerned about recent information stating that the Government is sponsoring a new general amnesty act as a prerequisite for the holding of elections.

The Committee again recommends that the State party should review and repeal the 1995 amnesty laws, which help create an atmosphere of impunity. The Committee urges the State party to refrain from adopting a new amnesty act.

10. The Committee expresses its concern about the fact that the judiciary is still being reorganized in Peru and that the existence of the Executive Judiciary Commission, which has broad powers, leads to interference by the Executive and undermines the independence of the

judiciary and the rule of law. One of the consequences of this reorganization is the large number of temporary judges. The Committee is especially concerned about the dismissal of the three Constitutional Court judges, Delia Revoredo Marsano de Mur, Manuel Aguirre Roca and Guillermo Rey Terry, by the Congress in 1997. An impartial and independent system of justice is essential for compliance with a number of articles of the Covenant, notably article 14.

(a) The State party must take the necessary measures to regularize the situation of the temporary judges, who may be dismissed peremptorily, and to guarantee their job security.

(b) The State party must reinstate the three Constitutional Court judges in their posts in order to normalize the Court.

(c) The State party must establish a mechanism guaranteed by law that ensures the independence and impartiality of judges and eliminates the possibility of the Executive interfering in the Judiciary.

11. The Committee appreciates the fact that Peru has released some of the persons convicted of the crime of terrorism on insufficient evidence and has pardoned them. However, it states once again that a pardon does not constitute full compensation for the victims of proceedings in which the rules of due process have been breached and in which innocent persons have been found guilty.

(a) The State party must establish an effective mechanism for the review of all sentences imposed by the military courts for the offences of terrorism and treason, which are defined in terms that do not clearly state which conduct is punishable.

(b) The State party must also release immediately all persons whose situation has now been decided by the Pardons Board.

12. The Committee deplores the fact that the military courts continue to have jurisdiction over civilians accused of treason, who are tried without the guarantees provided for in article 14 of the Covenant.

The Committee refers in this context to its General Comment No. 13 on article 14 and emphasizes that the jurisdiction of military courts over civilians is not consistent with the fair, impartial and independent administration of justice.

13. As indicated during the consideration of the third periodic report, the Committee considers that detention for up to 15 days in cases of terrorism, drug trafficking and espionage does not comply with article 9 of the Covenant.

It draws attention to the State party's obligation to amend its legislation so that any person who has been detained may be placed without delay at the disposal of the judiciary.

14. The Committee expresses its concern about poor conditions of detention, particularly in Lurigancho prison in Lima and the maximum security prisons of Yanamayo, in Puno, and Challapalca, in Tacna (high-altitude prisons where visiting rights, inter alia, are far from easy to exercise owing to the difficulty family members have in reaching them). Conditions in these prisons do not comply with article 10 of the Covenant.

The Committee urges the State party to take the necessary measures to improve prison conditions in Peru. In particular, it urges the State party to reduce the prison population of Lurigancho prison and close down Yanamayo and Challapalca prisons.

15. The Committee expresses its concern about the continuing practice of one year's isolation for convicted and unconvicted prisoners, in accordance with the regulations on the living conditions and progressive treatment of prisoners who are difficult to rehabilitate, those awaiting trial or sentenced for ordinary offences or for terrorism or treason. Such isolation may be extended when the person concerned breaks a rule, however minor.

The Committee urges the State party to review this practice, which affects the physical and mental health of persons deprived of their liberty and constitutes cruel, inhuman or degrading treatment or punishment, thus hampering full compliance with articles 7 and 10 of the Covenant.

16. The Committee notes with concern that there is a growing number of complaints of systematic harassment and death threats against journalists intended to undermine freedom of expression.

The Committee requests the State party to take the necessary measures to put an end to direct and indirect restrictions on freedom of expression, to investigate all complaints which have been filed and to bring the persons responsible to justice.

17. The Committee deplores the methods used by Peru to take control of communications media away from persons critical of the Government, including stripping one of them of his nationality.

The Committee requests the State party to eliminate these situations, which affect freedom of expression, in accordance with article 19 of the Covenant, and to make effective remedies available to those concerned.

18. The Committee deplores the fact that, of the four opposition members of Parliament who were victims of repeated acts of intimidation and about whom it requested reports from the Government, vague replies were given only about Mr. Gustavo Molme Llona, who has since died; no explanation was given about the three others, Javier Díez Canseco, Henry Pease García, Jorge del Castillo and some of their co-workers, and not a single reference was made to the investigations conducted in order to find the persons responsible.

The intimidation of members of Parliament, which prevents them from representing their constituents and exercising their functions freely and independently, must cease immediately and acts of intimidation must be investigated and the persons responsible punished.

19. The Committee considers the effective implementation of laws safeguarding human rights to be of the greatest importance.

The Committee requests the State party, in its next report, to provide detailed information on the effective implementation of the new civil and criminal legislation recognizing the rights of women.

20. It is a matter of concern that abortion continues to be subject to criminal penalties, even when pregnancy is the result of rape. Clandestine abortion continues to be the main cause of maternal mortality in Peru.

The Committee once again states that these provisions are incompatible with articles 3, 6 and 7 of the Covenant and recommends that the legislation should be amended to establish exceptions to the prohibition and punishment of abortion.

21. The Committee is concerned about recent reports of forced sterilizations, particularly of indigenous women in rural areas and women from the most vulnerable social sectors.

The State party must take the necessary measures to ensure that persons who undergo surgical contraception procedures are fully informed and give their consent freely.

22. The Committee sets 31 October 2003 as the date for the submission of the fifth periodic report of Peru. It requests that the text of the fourth periodic report of the State party and the present concluding observations should be published and widely disseminated in Peru and that the next periodic report should be made available to civil society and non-governmental organizations working in Peru.